

STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WV 25305

ORDER NO.99-1237

ORDER PROMULGATING PROCEDURES FOR
IMPLEMENTATION OF ACCREDITED INVESTOR
EXEMPTION

Pursuant to the authority granted to him by Chapter 32 of the West Virginia Code, 1931 as amended ("the West Virginia Uniform Securities Act", hereinafter referred to as the "Act"), and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner is of the opinion and finds as follows:

FINDINGS OF FACT

1. On April 27, 1997, the North American Securities Administrators Association ("NASAA") adopted the Model Accredited Investor Exemption ("MAIE"). MAIE provides exemption from securities registration only for offers and sales to accredited investors. The Commissioner (the "Commissioner") of the West Virginia Securities Commission (the "Commission") has reviewed the provisions of MAIE to determine if he should adopt a comparable exemption from securities registration under the authority of Section 402(b)(9) of the West Virginia Securities Act (the "Act").
2. The MAIE rests on the premise that accredited investors are capable of fending for themselves in information gathering and conducting "due diligence" on potential investments in companies before making an investment.

CONCLUSIONS OF LAW

3. Chapter 32, Article 4, Section 412 (a) of the Act provides that the Commissioner may, from time to time, make orders as necessary to carry out the provisions of the Act.

4. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 402 (b) of the Act.

5. The Act's exemption provision, specifically Chapter 32, Article 4, Section 402 (b), are sufficiently broad to allow the Commissioner flexibility to adopt procedures for implementation of the NASAA Model Accredited Investor Exemption ("MAIE").

NOW THEREFORE IT IS HEREBY ORDERED THAT:

6. Pursuant to Section 402(b)(9) of the Act that transactions meeting the following conditions will be exempted from Sections 301 and 403 of the Act:

(A) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. For purposes of this order, an "accredited investor" is a person who meets the definition set forth in 17 CFR §230.501(a). If 17 CFR §230.501(a) is hereinafter amended, the definition for purposes of this order will automatically be inclusive of such amendment 30 days from the date of effectiveness unless or until action is taken by the Commissioner to block or revoke such amendment during a period of one year from the date of effectiveness.

(B) The exemption is not available to an issuer that is in the development stage (as defined in the NASAA Statement Of Policy Regarding Corporate Securities Definitions, adopted April 27, 1997, hereinafter referred to as the "NASAA Policy") that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(C) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 302 through 304 of the Act or to an exemption from securities registration under the Act.

(D) (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the

issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters [see NASAA Policy] presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (D)(1) shall not apply if:

(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(c) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could

not have known that a disqualification existed under this paragraph.

(E) (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:

(a) The name, address and telephone number of the issuer of the securities;

(b) The name, a brief description and price (if known) of any security to be issued;

(c) A brief description of the business of the issuer in 25 words or less;

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; and

(f) A statement that:

(i) sales will only be made to accredited investors;

(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(F) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (E), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(G) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(H) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this order.

(I) The issuer shall file a notice of the transaction with the Commission within 15 days after the first sale of securities subject to the Act. The notice must include the following: an executed copy of the NASAA Model Accredited Investor Exemption Uniform Notice of Transaction; a consent to service of process on Form U-2 and (if applicable) Form U-2A; a copy of the general announcement; and a fee (\$125.00) as set forth in Administrative Regulation 15.06 (3) (d) of the Act.

(J) Disqualifying provision. Failure to comply with subsection (I) of this order shall not result in the loss of availability of the subject exemption unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Commissioner or any order, judgment, or decree by another state securities agency, the SEC or any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with a notice filing requirement for a comparable exemption. This provision shall not apply if the Commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of the disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.

(K) No commission, fee or other shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this State unless such person is appropriately registered in this State pursuant to the applicable provisions of the Code of West Virginia and the Administrative Regulations.

(L) This Order shall remain in effect until modified or vacated by the Commissioner.

Entered this 25th day of March, 1999.

Glen B. Gainer III
Commissioner of Securities

By: Barbara Harmon-Schamberger
Deputy Commissioner of Securities